

August 15, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0500706**

BROCC SNYDER
Code Enforcement Appeal

Location: 40513 – 264th Avenue Southeast, Enumclaw

Appellant: **Brocc Snyder**
40513 – 264th Avenue Southeast
Enumclaw, Washington 98022
Telephone: (360) 802-6640

King County: Department of Development and Environmental Services (DDes)
represented by **Jeri Breazeal** (formerly Jim Toole)
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
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SUMMARY OF RECOMMENDATION/DECISION:

Department's Preliminary Recommendation:	Deny appeal with revised compliance schedule
Department's Final Recommendation:	Deny appeal with revised compliance schedule
Examiner's Decision:	Deny appeal with further revised compliance schedule

EXAMINER PROCEEDINGS:

Hearing Opened:	April 17, 2007
Hearing Closed:	April 17, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On January 28, 2007, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellant Brocc Snyder that found a code violation on a Rural Area-10 (RA-10)-zoned property located at 40513 – 264th Avenue Southeast (aka SR 169), north of the City of Enumclaw. The Notice and Order cited Mr. Snyder and the property with following violation of county code:

- A. Construction of an addition to a barn without the required permits, inspections and approvals in violation of Sections 16.02.240 and 21A.28.020 of the King County Code and Sections 105.1 and 113.1 of the 2003 International Building Code.

The violations were required by the Notice and Order to be corrected by application for the required permits, inspections and approvals, with a complete application to be submitted by July 4, 2007 (and a pre-application meeting by April 4, 2007). If the permit application were ultimately denied, demolition and/or removal of the non-permitted construction is required within 30 days from the date of permit denial. Alternatively, the non-permitted construction was required to be demolished and the demolition debris removed by April 4, 2007. (The option of obtaining a demolition permit was qualified by the Notice and Order; see exh. no. 2 and Order requirement no. 5 below.)

2. Mr. Snyder filed a timely appeal of the Notice and Order, claiming that the subject work did not consist of a building addition, but merely repair of a structurally failing loafing shed. He described the loafing shed as a metal roof supported by vertical 4x4 posts and a short stemwall at one end. The Appellant states that he removed the stemwall and replaced it with a fully enclosed wall, and that the “south wall was added to hold up the roof.” Full walls were added in between the vertical 4x4 posts to fully enclose the loafing shed. Mr. Snyder contends that all of such work consists of repair and maintenance, not construction.
3. The loafing shed structure is a former lean-to type shed on the side of an existing larger barn. The new walls built to enclose the shed consist of typical 2x4 framed wall construction (with some windows) placed on new sill plates, which in turn are set on what appears to be new foundation work. The wall structures are sheathed with plywood sheeting. The Appellant acknowledged that the vertical 4x4 supports were decayed to the extent they needed to be replaced or other structural support provided for bearing purposes. The all-new wall enclosures comprise such bearing replacement/supplementation.
4. The replacement of the stemwall and new walls (on new sill plates and foundation work) providing full enclosure are not mere maintenance and repair but amount to significant new construction to improve and support the loafing shed structure. The charge of “construction of an addition” in the Notice and Order is therefore sufficiently accurate to be sustained.
5. DDES is correct in the Notice and Order’s assertion that a building permit is required for such work under the cited International Building Code (IBC; adopted by the county as its building code). Aside from the basic permit requirement under the code, DDES notes that the full wall

enclosure affects the structural stability of the previously open loafing shed because it changes the shear load (lateral forces) on the structure. Although it is clear that the structure's structural integrity must be examined for approval by the building official, and that will be conducted through the permit process, the substantive reasons behind the IBC permit requirements are not necessary for the Examiner to investigate or determine. The legislative wisdom of state and county lawmakers must be respected "as is" in deciding a code compliance matter, since policy decisions are the province of the legislative branch. An administrative or quasi-judicial decisionmaker cannot substitute the decisionmaker's judgment for that of the legislative body "with respect to the wisdom and necessity of a regulation." [*Cazzanigi v. General Electric Credit*, 132 Wn. 2d 433, 449, 938 P.2d 819 (1997); *Rental Owners v. Thurston County*, 85 Wn. App. 171, 186-87, 931 P.2d 208 (1997)]

6. Mr. Snyder contends that the county's regulations need to be reassessed as they are restricting development, and the county should not punish but instead should encourage good construction, which the Appellant asserts he is fully qualified to perform. He terms the county's laws "restrictive" and contends that they lead to a "hard-nosed attitude by DDES."
7. The Examiner does not dispute Mr. Snyder's construction skills and qualifications, but they are not relevant to the permit consideration at hand. And complaints about the level of regulation and permit requirements are not matters under the Examiner's jurisdiction or authority to address (see above Finding no. 5). They must be taken to the legislative forum.
8. Neither can the Examiner address the Appellant's complaints from a common law equity standpoint (essentially with the Appellant implying that the regulations are unfair), since the Examiner cannot consider them in that context. The Examiner is without jurisdiction to consider matters of equity in the law: they must instead be taken to a court of general jurisdiction, the Superior Court. The Examiner is generally limited to applying "black letter" law as duly enacted by statute, ordinance and rule, and has no authority to adjudicate common law issues such as claims in equity. [*Chaussee v. Snohomish County*, 38 Wn.App. 630; 689 P.2d 1084 (1984)]
9. The preponderance of the evidence in the record demonstrates that the construction work addressed by the Notice and Order is required to be conducted under the auspices of a valid permit and necessary inspections and approvals. As the permit, inspections and approvals have not been obtained, the violation found by the Notice and Order is correct.
10. DDES recommended that the 90-day compliance schedule established in the original Notice and Order be retained.

CONCLUSIONS:

1. The charge of violation in the Notice and Order is shown by a preponderance of the evidence to be correct, and the Notice and Order shall therefore be sustained.
2. DDES's recommendation regarding the compliance schedule is reasonable and appropriate.

DECISION:

The appeal is DENIED and the Notice and Order sustained, except that the compliance requirements shall be revised as stated in the following order.

ORDER:

1. Schedule and attend a permit pre-application meeting with DDES regarding the subject construction *by no later than September 28, 2007*.
2. Apply for and obtain the required permits, inspections and approvals for the subject construction, with a complete application submitted to DDES *by no later than December 14, 2007*.
3. Meet all deadlines imposed by DDES for requested supplemental information deemed necessary by DDES for permit review, and obtain the permit within the required deadlines.
4. As an alternative to seeking the necessary permits, inspections and approvals for the subject construction under nos. 2-3 above, the work may instead be demolished/removed *by no later than October 31, 2007*, with the obtainment of a demolition permit as required by DDES and removal of the demolition debris from the site and disposal at an approved facility. (But see no. 6 below regarding note of possible limitation on demolition option in Notice and Order.)
5. If the permit application is ultimately denied, demolition and/or removal of the non-permitted construction shall be accomplished **within thirty (30) days from the date of written permit denial**, with the obtainment of a demolition permit as required by DDES and removal of the demolition debris from the site and disposal at an approved facility. (See no. 6 below.)
6. DDES has noted in the Notice and Order, "Obtaining a demolition permit may not be an option if the construction is an addition and the entire building can't be torn down. They will still need a permit to remove the addition and repair the structure." Such determination is a DDES administrative decision.
7. No penalties shall be assessed by DDES against Mr. Snyder and/or the property if the above deadlines are complied with. If any one of them is not, DDES may assess penalties against Mr. Snyder and/or the property retroactive to the date of this order as provided by county code.

ORDERED August 15, 2007.

Peter T. Donahue
King County Hearing Examiner

TRANSMITTED via certified mail August 15, 2007, to the following party:

Brocc Snyder
40513 – 264th Avenue Southeast
Enumclaw, Washington 98022

TRANSMITTED August 15, 2007, to the following parties and interested persons of record:

Brocc Snyder
40513 - 264th Ave. SE
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NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE APRIL 17, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0500706.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Jim Toole and Bill Scharer, representing the Department, and Brocc Snyder, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for April 17, 2007
Exhibit No. 2	Copy of the Notice & Order issued February 28, 2007
Exhibit No. 3	Copy of the Notice and Statement of Appeal received March 6, 2007
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Copies of letters between DDES staff and Appellant
Exhibit No. 6	Photos of the subject structure